

REMARKS

In the Office Action mailed August 2, 2004, the Examiner rejected claims 1-29. By way of the foregoing amendments and the markings to show changes, Applicants have amended claims 1, 2, 8 and 23, canceled claims 5 and 26 and added new claims 30 and 31. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

I. Claim Rejections under 35 USC 102/103

The Office Action rejected claims 1-29 as anticipated by or obvious in view of one or more of the following references: Locke et al. (US 6,291,019); Burton (US 5,925,466); Wade et al. (US 5,580,945); Meader, Jr. et al. (US 4,025,683); Uhran et al. (US 4,145,512); Thomaidis et al. (US 5,626,840); Primeaux et al. (US 5,731,397); Wayne (US 4,341,412).

Applicants traverse these rejections and suggest that the claims as previously submitted were patentable. Applicants have amended claims 1 and 2 to clarify their patentability. Applicants traverse the rejection of claim 3 with particularity.

Claim 1

While Applicants believe that none of the references disclosed the composition of the process recited in claim 1 as previously submitted, Applicants have amended claim 1 to include the language of previously pending claim 5, which reads, "wherein the second component includes at least 40% of an aspartic acid ester by weight". Even the Office Action admits that such language distinguishes claim 1 from Locke et al. and Primeaux et al. As such, the composition can not be said to inherently exhibit the properties recited in claim 1.

Claim 2

While Applicants believe that none of the references disclose the composition of the process recited in claim 2 as previously submitted, Applicants have amended claim 2 to include the language, "wherein the amount of the at least one secondary amine is between about 40% and about 80% by volume of the second component

and the at least one primary amine is between about 10% and about 40% of the second component". The Office Action has suggested broadly at pages 3 and 7 thereof, with respect to Locke et al. and Primeaux et al. that "The composition amounts are within applicant's claimed range..." In contrast, Applicants contend that neither Locke et al. nor Primeaux et al. disclose such ranges as now recited in claim 2 and that the suggestion of the Office Action fails to make a prima facie case of obviousness against presently pending claim 2, previously pending claim 26.

Claim 3

Applicant traverse the rejection of claim 3 on the grounds that the Office Action has not made a prima facie showing of the obviousness of claim 3.

The Court of Appeals for the Federal Circuit, in the case of In re Lee, 61 USPQ2d 1430 (CAFC 2002), wrote:

("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.");...The need for specificity pervades this authority. See, e.g., In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed"); In re Rouffet, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

The Office Action has suggested respectively at pages 4 and 9 that it would have been obvious to modify the compositions of the Locke et al. and Primeaux et al. with a first reference to questionably arrive at the composition of claim 3 and then to

apply that new composition to a bedliner according to still another reference. Applicants suggest that this type of hindsight reconstruction is precisely what In re Lee protects against. There is no specific suggestion or motivation in the prior art to apply either Locke et al. or Primeaux et al to a bedliner much less is there specific motivation or suggestion in the prior art to modify the compositions of Locke et al. or Primeaux et al. and then apply such newly created compositions to a bedliner. Applicants request that the rejections of claim 3 of the present application be withdrawn.

II. New Claims

Applicants have added new claims 30 and 31 to address an aspect of the present invention.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants intend to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

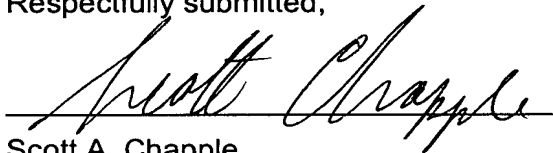
CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 04-1512 for any fee which may be due.

Dated: 18 October, 2004

Respectfully submitted,

A handwritten signature in cursive script, reading "Scott A. Chapple", written over a horizontal line.

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